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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,502	04/12/2004	Arty Chandra	I-2-0341.2US	3042
24374 7	590 11/29/2005		EXAMINER	
VOLPE AND KOENIG, P.C. DEPT. ICC			GELIN, JEAN ALLAND	
	ZA, SUITE 1600		ART UNIT	PAPER NUMBER
30 SOUTH 17TH STREET			2688	
PHILADELPHIA, PA 19103			DATE MAILED: 11/29/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)			
Office Action Summary	10/822,502	CHANDRA ET AL.			
Office Action Summary	Examiner	Art Unit			
	Jean A. Gelin	2688			
The MAILING DATE of this communication app Period for Reply	ears on the cover sheet with the c	orrespondence address			
A SHORTENED STATUTORY PERIOD FOR REPLY WHICHEVER IS LONGER, FROM THE MAILING DA - Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication. - If NO period for reply is specified above, the maximum statutory period w - Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tim vill apply and will expire SIX (6) MONTHS from cause the application to become ABANDONE	l. ely filed the mailing date of this communication. D (35 U.S.C. § 133).			
Status					
1) ☐ Responsive to communication(s) filed on <u>12 A</u> ₁ 2a) ☐ This action is FINAL . 2b) ☐ This 3) ☐ Since this application is in condition for allowar	action is non-final.	secution as to the merits is			
closed in accordance with the practice under <i>Ex parte Quayle</i> , 1935 C.D. 11, 453 O.G. 213.					
Disposition of Claims					
4) ☐ Claim(s) 1-13 is/are pending in the application. 4a) Of the above claim(s) is/are withdrav 5) ☐ Claim(s) is/are allowed. 6) ☐ Claim(s) 1-13 is/are rejected. 7) ☐ Claim(s) is/are objected to. 8) ☐ Claim(s) are subject to restriction and/or Application Papers 9) ☐ The specification is objected to by the Examine	vn from consideration. r election requirement.				
10) ☐ The drawing(s) filed on is/are: a) ☐ acceleration and acceleration and acceleration and acceleration and acceleration and acceleration and acceleration are declaration is objected to by the Explanation and acceleration are declaration as a content and acceleration are declarated as a content and accelerated accelerated accelerated acceleration accelerated accelera	drawing(s) be held in abeyance. See on is required if the drawing(s) is obj	37 CFR 1.85(a). ected to. See 37 CFR 1.121(d).			
Priority under 35 U.S.C. § 119					
 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some * c) None of: 1. Certified copies of the priority documents have been received. 2. Certified copies of the priority documents have been received in Application No 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). * See the attached detailed Office action for a list of the certified copies not received. 					
Attachment(s) Notice of References Cited (PTO-892) Notice of Draftsperson's Patent Drawing Review (PTO-948) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 1/6/04	4) Interview Summary (Paper No(s)/Mail Da 5) Notice of Informal Pa 6) Other:	PTO-413) te atent Application (PTO-152)			

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DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

- 2. Claims 1-13 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,735,443.

 Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-10 of patent # 6,735,443 contains every element of claims 1-13 of the instant application and as such anticipates claims 1-13 of the instant application.
- 3. "A later patent claim is not patentably distinct from an earlier patent claim if the later claim is obvious over, or **anticipated by**, the earlier claim. <u>In re Longi</u>, 759 F.2d at

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896, 225 USPQ at 651 (affirming a holding of obviousness-type double patenting because the claims at issue were obvious over claims in four prior art patents); In re Berg, 140 F.3d at 1437, 46 USPQ2d at 1233 (Fed. Cir. 1998) (affirming a holding of obviousness-type double patenting where a patent application claim to a genus is anticipated by a patent claim to a species within that genus). " ELI LILLY AND COMPANY v BARR LABORATORIES, INC., United States Court of Appeals for the Federal Circuit, ON PETITION FOR REHEARING EN BANC (DECIDED: May 30, 2001).

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kallio	US 2002/0147008	10/10/2002
Sunder et al.	US 2003/0134638	01/17/2002
Summer et al.	US 2003/0142641	07/31/2003

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean A. Gelin whose telephone number is (571) 272-7842. The examiner can normally be reached on 9:30 AM to 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on (571) 272-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JGelin

November 22, 2005

JEAN GELIN PRIMARY EXAMINER IJean Alland Celin